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HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 628

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, CALIFORNIA, a public body corporate and politic,

Petitioner,

v.

JIM C. CORDOVA, RAMONA CORDOVA.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

RESPONDENTS' MEMORANDUM IN REPLY TO PETITION FOR WRIT OF CERTIORARI

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Respondents agree that this Court has jurisdiction under 28 USC 1257(3). In addition to the reasons set forth by petitioner, there is also jurisdiction under that section in that the validity of a statute of the United States (42 USC 1411(c); 67 Stat. 307) is drawn in question.

Respondents also agree that this is an appropriate case for the grant, by this Court, of certiorari. In so stating, respondents are not to be understood as agreeing, or even suggesting, that the decision of the court below is erroneous. Just the contrary is the case and respondents believe the judgment below is correct.

Respondents are mindful of the views of this Court as to parties' pressing it for a decision, on constitutionality, or otherwise (United States v. CIO, 335 U.S. 106; and see Frankfurter, J., concurring, 335 U.S. at 124 et seq.). Nevertheless respondents recognize the substantial nature of the questions involved[1/] and

1/ Respondents believe that the questions, as framed by petitioner

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are of the view that the case is one which falls within the rule set down by this Court in Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70. As petitioner points out, the validity of its action is important, not only to respondents, nor even to the many tenants of petitioner. The oath requirement in issue here is being required by housing authorities in many, if not most or all, of the 48 states, less, now, Wisconsin.

Following this Court's order denying certiorari in Housing Authority of the City of Milwaukee v. Lawson, ___ U.S. ___, 100 L.ed. (adv. op.) 77, No. 354, Oct. Term, 1955, the following story appeared in the New York Times for November 9, 1955 (Pg. 26, Col. 8, Late City Edition):2/

"TENANT OATH HELD VALID IN 47 STATES

"Washington, Nov. 8 (AP) - Federal housing tenants in every state but Wisconsin will still be required to sign loyalty oaths, a Government attorney said today.

"Lawrence Davern, assistant general counsel of the Public Housing Administration, said the rule would continue to stand elsewhere despite the Supreme Court refusal yesterday to interfere with a Wisconsin court decision against the oaths.

"The housing agency takes the position, Mr. Davern said, that the Wisconsin Supreme Court ruling applied only to the one state.

"The oath requirement, proposed by Representative Ralph W. Gwinn, Republican of Westchester County, New

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1/ (cont.) (Pet. 8), are not as precise or as accurate as they might be. However, any difference between petitioner and respondent as to this may be a matter of viewpoint. In any event, respondents are of the view that the questions, as framed, are sufficient so as to fairly comprise within them (Rule 23(1)(c) of this Court) the issues present in this case.

2/ Virtually the same story appeared in the Los Angeles Times (Nov. 9, 1955, pg. 8, part I). Presumably the same report was carried in various other papers throughout the nation.

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York, went into the housing law in 1952. Mr. Davern estimated about 250,000 heads of families in Federal housing projects had signed it. Eighteen tenants in other states have challenged the provision in court.

"Mr. Davern noted the Supreme Court had not expressed an opinion on the constitutionality aspects. It declined to review the Wisconsin decision.

"Mr. Davern said the agency would welcome a Supreme Court opinion on the law, which he called a 'headache.'

"The Wisconsin court, in a case involving the Hillside Terrace project in Milwaukee, held the oath requirement deprived tenants of their right of free speech and assembly."

It is thus seen that a decision by this Court is necessary to decide this federal question of substance (Rule 19(1)(a) of this Court).

Moreover, while respondents would not presume to know why this Court denied certiorari in the Lawson case (Sunal v. Large, 332 U.S. 174, 181; House v. Mayo, 324 U.S. 42, 48; Maryland v. Baltimore Radio Show, 338 U.S. 911), by the same token, the denial of certiorari in that case cannot be taken as a decision on the merits (ibid). Indeed, an examination of the petition filed in the Lawson case, and of the decision of the Supreme Court of Wisconsin in that case (270 Wis. 269, 70 N.W. 2d 605), suggests that the Wisconsin court's ruling was not a final judgment. The Wisconsin Supreme Court's ruling was simply: "Judgment reversed and cause remanded with directions to overrule the demurrer." (70 N.W. 2d at 615; see also Petition in Lawson case, page 4). Accordingly, the posture of that case when it came to this court was, therefore, essentially the same as in the case at bar after the January 19, 1955 decision of the court below (Appendix C to Petition), where the court said: "The judgment is reversed and the cause remanded for trial upon the issues tendered

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by the pleadings." (Pet., Appx. C, pg. 13; R. ___).

Unlike the case at bar, the Lawson case did not go back for development of the facts at a trial. Accordingly, this Court may well have felt that the Lawson case was not ripe for decision by this Court and this may well have been the reason for its order denying certiorari.

C O N C L U S I O N

It would seem that the instant case presents an appropriate one for the grant of certiorari, and for the consideration by this Court of the important and substantial constitutional issues, on their merits.

Respectfully submitted,

A. L. WIRIN
FRED OKRAND

Attorneys for Respondents.

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